

It is undisputed claimant suffered an injury to her head when she apparently fell or collapsed while at her work site during her regular work hours. The Administrative Law

Judge (ALJ) determined that claimant's fall at work was the result of a personal condition and her injury was not worsened by a hazard of her employment. Consequently, the ALJ found the claimant's accidental injury did not arise out of and in the course of employment with the respondent and denied benefits.

The claimant requests review of whether her accident arose out of and in the course of her employment.¹ Claimant argues that she slipped in water at work and her fall was not the result of a personal condition. In the alternative, claimant argues the cause of her fall was unexplained and accordingly would be compensable. Finally, claimant argues that even if her fall was the result of a personal condition, the fact that she fell onto a concrete floor exacerbated and worsened the effects of the fall and constituted a hazard of employment. Accordingly, claimant requests the Board to reverse the ALJ's decision and find that she suffered accidental injury arising out of and in the course of her employment.

Respondent argues the claimant fainted because of a personal condition and her work environment did not expose her to an increased risk of injury. Consequently, respondent requests the Board to affirm the ALJ's Award.

The sole issue for Board review is whether claimant suffered accidental injury arising out of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The claimant was employed as a scanning coordinator for Hy-Vee. Her job duties required that she physically change the price signs for individual products on the shelves as the various department managers would instruct her. Claimant would then enter the price for the item into the computer so when the product was scanned the price charged would correspond with the price indicated for the item on the shelf.

Claimant's work schedule was from 6 a.m. to 2 p.m except on Wednesdays when she went into work at 3 a.m. because the sale items change effective every Wednesday.

On Wednesday, March 31, 1999, claimant arrived at work at 3 a.m. and clocked in with a co-worker, Debora Donnelly. Ms. Donnelly was also employed as a scanning

¹ Claimant's request for review raised several additional issues but, as noted, at oral argument before the Board, the respondent agreed claimant was entitled to the compensation she requested which resolved those issues.

coordinator. As the two walked from the front of the store towards the back where their office was located they each began pulling price signs that needed to be replaced.

On the way to the office they shared, Ms. Donnelly testified claimant said she felt kind of dizzy. When they reached their office, they each began working at their computer terminals. At that point the claimant again said that she felt dizzy and was having difficulty hearing out of one ear. Claimant said she had sprayed weeds the night before and thought maybe her allergies were causing the problems.

After working at her computer terminal for approximately ten minutes, the claimant left the office and when she returned five minutes later she said to Ms. Donnelly that she thought she had fallen. Ms. Donnelly noticed blood on claimant's shirt and head. Ms. Donnelly assisted claimant to the front of the store and an ambulance was summoned. A wash cloth was applied to the wound on claimant's head. Claimant became nauseous and was escorted to the restroom.

The ambulance arrived at 3:24 a.m. and John Bristow, a paramedic, provided treatment to the claimant. Mr. Bristow indicated claimant was conscious and alert and she told him that she had suffered a fainting spell. Mr. Bristow testified:

Q. On page 2 of your report at the top of the page, is that your narrative report of what Miss Bissen told you?

A. Yes, it is.

Q. Would you please read what you have written there.

A. "Sharon tells us she was working at her computer this A.M. when she suffered a syncopal episode. She has been complaining of an earache all day and says she passes out easily. She responded immediately after falling over backwards and striking her head. She got up and walked to the bathroom. We found her there nauseated with vomiting. We found an irregular heartbeat which she had no knowledge of." Let me back up. You asked me awhile ago where I found her and it says I found her in the bathroom.

Q. What is a syncopal episode?

A. Fainting spell.²

Mr. Bristow's examination of claimant revealed a small laceration with minimal bleeding to the occipital portion of her scalp as well as an irregular pulse. Claimant was transported to the Olathe Medical Center emergency room. The emergency room

² Bristow Depo. at 7-8.

physician, Dr. Chris Davlantes, noted claimant was alert and oriented and he further noted claimant had a syncopal episode at work, proceeded by an acute onset of dizziness.³

It appears that the initial focus of medical treatment was directed at the claimant's atrial fibrillation. Claimant was treated with a Cardizem drip and a Heparin infusion. Later Dr. James R. Phillips discontinued the Heparin because he was concerned about administering that drug to someone with a head trauma. The doctor ordered a CT Scan which revealed claimant had developed a large intracerebral hematoma in the right temporal parietal lobe. On March 31, 1999, Dr. Steven Hess performed an emergency surgical right temporal craniotomy with hematoma evacuation.⁴

After her hospitalization the claimant could not recall where she fell or what she struck. Nor did claimant recall tripping or slipping on anything. However, over two years after the accident the claimant testified that while having breakfast with a friend she suddenly recalled what had happened on March 31, 1999. Claimant testified that she had slipped in water on the floor, fell and either hit her head on a pallet or the floor.

But Ms. Donnelly, claimant's co-worker, denied that there was water on the floor the morning of March 31, 1999, either when she and claimant went back to the office or as she assisted claimant to the front of the store after the accident. Ms. Donnelly testified:

Q. So you don't know if the area was wet or not?

A. The area was not wet.

Q. And so when you walked back with Sharon initially to go to work you didn't notice the area being wet; is that right?

A. The area was not wet.

Q. And then when you took Sharon to the front of the store, is it your testimony that the area was not wet?

A. It was not wet.

Q. And how do you know it wasn't wet?

A. I took Sharon out of the back room.

Q. And you specifically remember that?

³ Stipulations dated Dec. 2, 2003, Ex. D at 2.

⁴ Id. at 8-9.

A. Pardon?

Q. And you specifically remember that?

A. Specifically remember what?

Q. The fact that it wasn't wet?

A. I do. I remember seeing where the blood was, and I did not see any water, any sign of wetness.⁵

Ms. Donnelly further noted that the closest pallet was approximately eight feet from where she had observed blood on the floor.

The ALJ ordered claimant examined by Dr. Dennis G. Cowan, a psychologist who specializes in neuropsychology. The doctor met with claimant on April 21, 2000, and May 1, 2000. The doctor diagnosed claimant with post-concussional syndrome and rated claimant with a 13 percent permanent impairment. Dr. Cowan further noted that head injury victims typically recall the traumatic events in bits and pieces rather than all at once. And he noted that the largest percentage of head injury victims never recall any of the event. The doctor concluded that it was highly unlikely for claimant to regain her memory as she alleged.

Dr. Patrick L. Hughes, a board certified psychiatrist, also testified that very few head injury victims regain memory of the event after 24 months have elapsed from the incident. Dr. Hughes also agreed that memory comes back in bits and pieces, if at all, and it was inconsistent for claimant to recall everything at once as alleged by claimant. Dr. Jeffrey M. Kaplan, in a report dated February 27, 2002, noted it was highly unlikely claimant would be able to recall the incident after the passage of several months. Conversely, Dr. Bernard M. Abrams, a neurologist, noted that it would not be common to recall the incident a number of years after a head injury but that it was possible.

Claimant must establish personal injury by accident arising out of and in the course of employment.⁶ For a claim to arise "out of" employment, its cause or origin must develop out of the nature, conditions, obligations and incidents of employment.⁷

The claimant's recollection of slipping in water and falling is not supported by the preponderance of the credible evidence. Ms. Donnelly noted that there was no water on

⁵ Donnelly Depo. at 28.

⁶ K.S.A. 1998 Supp. 44-501(a).

⁷ *Brobst v. Brighton Place North*, 24 Kan. App.2d 766, 771, 955 P.2d 1315 (1997).

the floor nor any obstacles that might have caused claimant to trip. And claimant had complained of being dizzy before the fall. The paramedic took a history from claimant that she had suffered a fainting spell. The emergency room doctor received a similar history. Both the paramedic as well as the doctor specifically noted that claimant was alert and oriented when she provided the history. Lastly, the doctors noted that it was highly unlikely for claimant to have suddenly recalled the incident 2 years later. The Board affirms the ALJ's determination that claimant failed to meet her burden of proof that her fall was caused by slipping in water on the floor.

The key fact is that claimant complained to her co-worker about feeling dizzy before the accident. This is undisputed. Moreover, claimant attributed that condition, as well as difficulty hearing in her left ear, to allergies.

The Board finds a nexus between claimant's feeling dizzy and her fainting spell. Rather than being an unexplained fall, this would be a personal condition of the employee.⁸ Where an employment injury is clearly attributable to a personal condition of the employee, and no other factors intervene or operate to cause or contribute to the injury, no award can be granted. But where an injury results from the concurrence of some preexisting personal condition and some hazard of employment, compensation is generally allowed.⁹

In *Bennett*, the claimant's personal epileptic condition caused him to black out. But it was the fact that he was driving a motor vehicle that subjected him to an additional risk. Professor Larson agrees that the effects of a fall can become compensable if conditions of employment place the employee in a position which increases the effects of the fall, such as in a moving vehicle.¹⁰ Here, we have a personal condition of the claimant with no additional risk from her employment.

The Board finds the fall experienced by claimant on March 31, 1999, was from a personal condition of the employee. There is no concurrent risk from claimant's employment. Claimant was simply walking across the floor when she fainted, fell to the floor, and hit her head. The Board does not find the fact that claimant was walking on a concrete surface to constitute a hazard of employment. This case is thereby distinguishable from a claimant's automobile crashing into a tree during an epileptic seizure as in *Bennett* or falling into an open pit on the job site as in *Baggett*.¹¹ Therefore, the Board finds the injury did not arise out of claimant's employment with respondent.

⁸ See 1 *Larson's Workers' Compensation Law* § 9.01[4][a] (2003).

⁹ *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, rev. denied 250 Kan. 804 (1992).

¹⁰ 1 *Larson's Workers' Compensation Law* § 9.01[1] (2003).

¹¹ *Baggett v. B & G Construction*, 21 Kan. App. 2d 347, 900 P.2d 857 (1995).

AWARD

WHEREFORE, it is the finding of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated December 4, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Anemarie D. Mura, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director